

**FILED**

MAR 28 2008

3-28-2008

**MICHAEL W. DOBBINS**  
**CLERK, U.S. DISTRICT COURT**

LUZ EDWARDS  
A72571777

**IN THE UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF ILLINOIS**  
**EASTERN DIVISION**

Plaintiff,

v.

U.S. Department of Homeland  
Security, Secretary Michael Chertoff;  
United States Citizenship and Immigration  
Services, Robert Blackwood, Field Office  
Director; Robert Mueller, Director, Federal  
Bureau of Investigations

Defendants.

08CV1795

JUDGE MAROVICH

MAGISTRATE JUDGE NOLAN

**PETITION FOR WRIT OF MANDAMUS**

NOW COMES the Plaintiff, Luz Edwards, by and through his attorney, Mark M. Graham of Dominguez Law Firm P.C., and respectfully petitions this Court for a hearing on the Petitioner's Immigration Naturalization Application and to obtain a Writ of Mandamus compelling the U.S. Department of Homeland Security and the United States Citizenship and Immigration Services to make a decision on the application as required by law, and in support thereof, states as follows:

**STATEMENT OF ACTION**

This action is brought to compel action on Application for Naturalization (hereinafter "N-400") properly filed with the United States Citizenship and Immigration Services (hereinafter "USCIS") by the Plaintiff. To the Plaintiff's detriment, Defendants have failed to adjudicate the application.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under 8 U.S.C. § 1447(b) and Immigration and Nationality Act ("INA") § 336(b). These provisions specifically provide for judicial review when USCIS fails to make a decision on a naturalization application within 120 days after examination.

2. This Court has original jurisdiction to hear both civil actions arising under the law of the United States and actions to compel an officer or employee of the United States or an agency thereof to perform a duty. 28 U.S.C. § 1331; 28 U.S.C. § 1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.
3. This action is brought to compel the Defendants, and officer and an agency of the United States, to perform the duties arising under the law of the United States.
4. This Court has jurisdiction to hear actions arising from claims that an agency or officer or employee of a government agency failed to act in its official capacity and the person to whom the duty owed suffered a legal wrong. 5 U.S. C. §702.
5. This action invokes the Plaintiff's right of due process under the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction.
6. This action is brought due to the repeated failure of the Defendants to perform their duty to adjudicate the Plaintiff's N-400 Application for Naturalization within a reasonable amount of time. Failure to adjudicate said application has resulted in harm to the Plaintiff.
7. The USCIS interviewed Plaintiff on his application for naturalization on or about January 18, 2005. (Exhibit "A").
8. Venue is proper in the Northern District of Illinois because the Defendants reside in the Northern District of Illinois and a substantial part of the activities complained of occurred in the Northern District of Illinois. See 8 U.S.C. §1391 (e).
9. Plaintiff has exhausted all of his administrative remedies in this case as required by 8 C.F.R. § 336.9.

#### **PARTIES**

10. Plaintiff is a native and citizen of Colombia who has been a Lawful Permanent Resident of the United States. Plaintiff is a person of good moral character and has demonstrated

knowledge of the English language and U.S. government and history as required by §316 of the INA, 8 U.S.C. §1427.

11. Defendant MICHAEL CHERTOFF, the Secretary for the Department of Homeland Security (hereinafter "DHS"), is being sued in his official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant Chertoff, through his delegates, has authority to adjudicate naturalization applications filed with USCIS and to accord citizenship under the provisions of §335 of the Immigration Act, 8 U.S.C. §1446.
12. Defendant Robert Blackwood (hereinafter "Blackwood"), is the District Director of Chicago USCIS, is being sued in his official capacity only. Blackwood is charged with supervisory authority over all of Chicago, USCIS operations and USCIS agents and officers acting in their official capacity.
13. That Robert Mueller is sued in his official capacity. Based upon information from USCIS, the Federal Bureau of Investigations (hereinafter "FBI") is responsible for the proper background and "name-check" clearance conducted on each applicant for Naturalization.

#### CAUSE OF ACTION

14. Plaintiff filed form N-400, Application for Naturalization with USCIS on or about May 26, 2004, pursuant to §334 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 8 U.S.C. § 1445.
15. That on January 18, 2005, Plaintiff was scheduled at the Chicago, Illinois Citizenship Office. Plaintiff passes the tests of English, U.S. History and Government and was advised that a decision could not yet be made on the application. (Exhibit "A").
16. That after date, Plaintiff made numerous inquiries concerning the status of his application. Specifically, on March 13, 2006, Plaintiff received a response from Acting District Director F. Gerard Heinauer, U.S.C.I.S., explaining that his application was on hold due to pending

security checks. (Exhibit "B"). After numerous other inquiries including a July 24, 2007 "Info-pass" appointment she was given a form letter indicating her application is on hold due to the FBI check and she was told there was nothing she could do about it. (Exhibit "C"). Most recently, on May 11, 2007 Plaintiff continued to write the USCIS and copy her elected representatives (Exhibit "D").

17. That Defendant's have no basis in law or in any of the regulations promulgated by the Attorney General not to successfully adjudicate Plaintiff's application.
18. That pursuant to §336 of the I.N.A., 8 U.S.C. §1447, Defendant Blackwood was required to make a determination on Plaintiff's application for naturalization within 120 days following examination. That said period has expired.
19. That Plaintiff has been prejudiced as a result of Defendant's failure to receive a decision concerning his application. Plaintiff has waited for over three years for a decision concerning whether he can become a Citizen of the United States and has been denied opportunities accorded with that status.

WHEREFORE, Plaintiff prays that this Court grant him the following relief:

- A. To hold a hearing on Plaintiff's application for naturalization as required by §336, 8 U.S.C. § 1447 (b);
- B. To order by Writ of Mandamus the Defendants to adjudicate Plaintiff's application immediately;
- C. To grant Plaintiff citizenship pursuant to his application for naturalization;
- D. Awarding Plaintiff reasonable attorney's fees pursuant to 28 U.S.C. § 2414 for failure of the Defendants to perform their duties within a reasonable amount of time; and
- E. Granting such other relief at law and in equity as justice may so require.

Respectfully Submitted,  
LUZ A. EDWARDS



By: s/Mark M. Graham  
Mark M. Graham  
Attorney for Plaintiff

ARDC No. 6275025  
Mark M. Graham  
Attorney for Luz A. Edwards, Plaintiff  
Dominguez Law Firm P.C.  
5801 West Roosevelt Road  
Cicero, IL 60616  
708-222-0200

Plaintiff's  
EXHIBIT  
"A"

Department of Homeland Security  
U.S. Citizenship and Immigration Service

# Naturalization Interview Results

A#: 72571177

On 1/18/05, you were interviewed by INS Officer Harris

- ☒ You passed the tests of English and U.S. history and government.  
☒ You passed the test of U.S. history and government and the English language requirement was waived.  
☐ The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.  
☐ You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak/ \_\_\_\_\_ read / \_\_\_\_\_ / write English.  
☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.  
☐ Please follow the instructions on the Form N-14.  
☐ INS will send you a written decision about your application.  
☐ You did not pass the second and final test of your \_\_\_\_\_ English ability / \_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

A)            Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for your Oath Ceremony.

B)  A decision cannot yet be made about your application.

**It is very important that you :**

- ✓ Notify INS if you change your address.
- ✓ Come to any scheduled interview.
- ✓ Submit all requested documents.
- ✓ Send any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.
- ✓ Go to any oath ceremony that you are scheduled to attend.
- ✓ Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.

U.S. Department of Homeland Security  
10 W. Jackson Blvd.  
Chicago, IL 60604



U.S. Citizenship  
and Immigration  
Services

Plaintiff's  
EXHIBIT  
"B"

March 13, 2006

Luz Edwards  
604 Ivarene Ct.  
Carpentersville, IL 60110

Re: A072571777 -- Edwards, Luz

Dear Luz Edwards,

The United States Citizenship and Immigration Services (USCIS) Chicago District Office is responding to your inquiry. Our information shows that the background investigation conducted by the Federal Bureau of Investigations (FBI) for you has not yet been completed. We may not proceed with the adjudication of the application or petition until the FBI completes their process and our records are updated with the results. It is uncertain the time-period it takes for the results to be electronically submitted to USCIS and updated in our national records.

We understand your frustration in the delaying of the decision, however, in order to fulfill USCIS mission to provide immigration benefits and services to the public, we must balance our obligations to the individual applicant against our obligations to the public, as a whole. While we strive to process applications timely and fairly, we must also ensure that our policies and procedures will safeguard the public. Consequently, we have adopted background security check procedures that address a wide range of possible risk factors, requiring various levels of scrutiny based on the type of application under consideration.

Given the number of applications submitted and the significance of immigration benefits, it is inevitable that some applications will require more attention than others. USCIS relies primarily on three background check mechanisms: the Interagency Border Inspection System (IBIS) name check, the FBI fingerprint check, and the FBI name check. For the vast majority of applicants, these mechanisms allow USCIS to quickly determine whether there are any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before any decision can be made on the petition or application. USCIS does not share with applicants or their representative's information regarding the specific nature of the match or the nature or status of any investigation.

Please be assured that every case that is pending a background investigation is checked weekly for results to keep the adjudication process ongoing and timely. We are allowed to resubmit names pending over 90 days only if the name does not appear in the FBI database after 90 days of submission. If requesting an expedite processing of the background investigation your constituent must provide a written request with an explanation directed to the District Director for consideration with supporting evidence. The FBI will only expedite the processing if your constituent is in the military, an "age-out", diversity (DV) lottery winner meeting the deadline date or for compelling reasons.

Again, it is difficult to predict with accuracy when the clearance will be updated in our records. Please be assured that every effort is being made to render a final decision in a timely manner.

We appreciate your patience and understanding.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Gerard Heinauer".

F. Gerard Heinauer  
Acting District Director

FGH:dea  
Thank you for contacting USCIS Customer Service



U.S. Department of Homeland Security  
10 West Jackson Boulevard  
Chicago, Illinois 60604



U.S. Citizenship  
and Immigration  
Services

Plaintiff's  
EXHIBIT  
"C"

Dear Applicant:

Although we have completed the interview on your application we cannot make a decision on your case because the required security checks are incomplete. Once the background investigation is completed we will make and inform you of our decision as quickly as possible.

We understand that you may be frustrated by this news. However, in order to fulfill its mission to provide immigration benefits and services to the public, USCIS must balance its obligations to the individual applicant against its obligations to the public as a whole. Consequently, we have adopted enhanced security check procedures.

Given the significance of immigration benefits and the number of applications submitted, it is inevitable that some applications will require more attention than others. Some factors that may lead to delays are the volume of record checks, the number of records to be checked and the processing of common names. For the vast majority of applicants, USCIS is able to quickly determine whether there is any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before a decision can be made on the case. However, a match does not always lead to a denial of the application. USCIS does not share information regarding the specific nature of the match or the nature or status of any investigation with applicants or their representatives.

We remain committed to processing cases within a reasonable period of time. In some cases, however, unresolved security concerns will create delays. We ask for your patience in such cases, and in return we promise to continue to seek resolution as quickly as possible in each individual case.

Sincerely,

District Director

Plaintiffs  
EXHIBIT  
" D "

Luz Edwards  
A.K Luz Angelas Misas  
604 Ivarenne Ct  
Carpentersville, IL. 60110  
May 11, 2007-05-11

USCIS  
Naturalization Department  
101 W. Congress Pkwy  
Chicago, IL. 60610

Dear Sir or Madame:

RE: A072 571 777

Do not tell me that use the USCIS web page to communicate with you or to call the USCIS Customer Service Number 800 375 5283 because it has been an exercise in futility.. Two weeks ago was my last time to call that number. The person told me "Really I do not know how to answer you and I do not have any explanation for the USCIS to contact you. Write a letter to them". Very sad commentary by a representative of the USCIS.Department !What hope for this great country, when and officer of USCIS does not know what to respond to an inquiry of a simple case!.

I am a widow of Jerry Lee Edwards an American citizen by birth. He died on July 24, 2005. On May 26, 2004 I submitted Form N-400 application for naturalization.

On January 18, 2005 I was interviewed by and officer of USCIS and passed the English and U.S. history and government tests. ( Exhibit A). Officer Harris told me "we will contact you for the oath ceremony. I am not making any decision now, my supervisor will review your case. "I think -said Officer Harris - everything is O.K"

Well the date was January 18, 2005. Up today date 840 days has elapsed . (Two yeas and five months) for the F.B.I to respond to you. I believe that even you do not believe yourselves. I believe also, that if I were a criminal you will not spent so long to call me for the oath ceremony. On your own eyes this way to treat a case is ridiculous.

I have been sending letters, calling you, visiting you and you always have the same excuse, the FBI still is checking you". Exhibit B.

This letter is to request your decision on my case.

I appreciate very much your answer to my inquiry.

Sincerely,

**COPY**

Luz A. Edwards

CC: Emilio T. Gonzalez-Director of USCIS  
Sen. Barack Obama